United Nations A/57/736

General Assembly

Distr.: General
18 February 2003

Original: English

Fifty-seventh session
Agenda item 123
Administration of justice at the United Nations

Administration of justice in the Secretariat

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the administration of justice in the Secretariat (A/56/800). The Committee also had before it the report of the Joint Inspection Unit on reform of the administration of justice in the United Nations system: options for higher recourse instances (JIU/REP/2002/5), which was transmitted by the Secretary-General in document A/57/441, as well as the comments thereon of the Secretary-General and of the United Nations System Chief Executives Board for Coordination (A/57/411/Add.1) and of the United Nations Administrative Tribunal (A/C.5/57/25). During its consideration of the item, the Committee met at various times with representatives of the Secretary-General and members of the Administrative Tribunal and the Chief Executives Board.

2. The report of the Secretary-General was submitted pursuant to General Assembly resolution 55/258 of 14 June 2001, in which the Assembly requested the Secretary-General to, inter alia, review the role of the Joint Appeals Board and the difference between the statutes of the United Nations Administrative Tribunal and the Administrative Tribunal of the International Labour Organization (ILO) with regard to specific performance of an obligation and compensation limits.

Joint Appeals Board

3. The request for the Secretary-General to review the Joint Appeals Board is contained in section XI, paragraph 4 of General Assembly resolution 55/258. **For the reasons stated in the report of the Secretary-General (A/56/800, paras. 15-21), the Advisory Committee agrees that there is no need to change the nature of the Board. The Committee recommends acceptance of the proposal of the Secretary-General in paragraph 21 of his report, which is to "maintain the positive elements of the current system, that is, advice provided by a joint body of peers, and to rectify the problems currently experienced by that system".**

03-25169 (E) 200203

4. In paragraph 5 of the report, the Secretary-General proposes to amend staff rule 111.1 (b) (i) to provide for joint selection of the chairpersons of the Joint Appeals Board by staff and management. **The Advisory Committee recommends acceptance of this amendment, which reflects current informal practice.**

5. **The Advisory Committee agrees with the conclusion contained in the report of the Secretary-General (A/56/800, para. 8) that there is no need to strengthen the current advisory function of the Joint Appeals Board with regard to suspension of action on a contested administrative decision.**

6. The issue of the time available for the Joint Appeals Board to produce its report is examined in the report of the Secretary-General (A/56/800, paras. 9-11). As is apparent from the comments in those paragraphs, the handling of appeals to the Board is currently fraught with unacceptable delays. **The Advisory Committee therefore welcomes the fact that the Secretary-General has requested OIOS to conduct a management review of the entire appeals process in order to identify the causes of the delays and to make proposals to remedy the situation (A/56/800, para. 11).**

7. **The Advisory Committee requests that the study should include a review of whether the provision of a full-time chairperson of the Joint Appeals Board would contribute to expediting the handling of cases. OIOS should also attempt to quantify the cost of a comparative set of selected cases from the beginning to the time those cases are completed at the Administrative Tribunal and to ascertain whether a strategic increase of the resources available at any particular stage of a case would ultimately lead to a speedier handling of the cases concerned, thereby reducing the overall level of staff time and other resources devoted to the appeals process. Such quantification should include the loss of workdays by staff and management that could otherwise be used to implement work programmes. Subject to the need to protect the rights of both the appellant and the respondent, OIOS should examine the extent to which limitations could be placed on the frequency allowed to the parties to submit written pleadings and counterclaims (see A/56/800, para. 10 (ii)).**

8. With regard to the amendment to staff rule 110.4 in connection with due process, the Advisory Committee notes from the report of the Secretary-General (A/56/800, annex I) that the amended text does not require that the notification of the allegations against the staff member be in writing. **The Committee recommends that the amendment should provide for written notification.**

United Nations Administrative Tribunal

9. The differences between the statutes of the United Nations Administrative Tribunal and the Administrative Tribunal of ILO are discussed in the report of the Secretary-General (A/56/800, paras. 35-43). As indicated in paragraph 38 of the report, under the statute of the ILO Administrative Tribunal "it is the Tribunal itself that decides whether a rescission or performance 'is not possible or desirable', in which case it awards the applicant monetary compensation (not subject to any specific limits ...)". In respect of the United Nations Administrative Tribunal, the Tribunal fixes, "as part of its original judgement, an amount of compensation to be paid to the applicant (subject to a conditional limit ...), leaving it to the Secretary-General to decide whether 'in the interest of the United Nations' he prefers to

comply with the order for rescission or performance, or to pay the amount indicated by the Tribunal".

10. The Advisory Committee recalls its comment in its previous report (A/55/514, para. 10) that "the inability of the Administrative Tribunal to order specific performance seriously limits the staff's rights to redress. Although this gap has existed since the inception of the Tribunal, the Committee believes that time has come to consider closing it, especially when a number of other far-reaching reforms in the area of human resources management are being considered".

11. In its resolution 55/258 (sect. XI, para. 7), the General Assembly took note of the observations of the Advisory Committee that there was "a gap" between the statutes of the United Nations Administrative Tribunal and the Administrative Tribunal of ILO with respect to specific performance of an obligation and compensation limits, and requested the Secretary-General to take necessary measures to "close the gap" as appropriate between the statutes of the two Tribunals.

12. In its comments on the report on the administration of justice in the United Nations, the United Nations Administrative Tribunal concludes, inter alia, that in view of "the overwhelming support of various United Nations bodies and organs for the need to close the gap between the two Tribunals, and taking into account the far-reaching reforms in the area of human resources management that are taking place in the United Nations system, the United Nations Administrative Tribunal strongly recommends that the General Assembly amend article 9 of its statute with a view to closing the gap between the statutes of the two Tribunals and removing the restrictions on the authority of the United Nations Administrative Tribunal" (A/C.5/57/25, annex II, para. 4).

13. **Whether or not the General Assembly endorses the views of the United Nations Administrative Tribunal on specific performance, the Advisory Committee recommends that the Tribunal be strengthened through an amendment to its statute requiring that candidates for the Tribunal possess judicial experience in the field of administrative law or its equivalent in the candidate's national jurisdiction. This change would obviate the need for the third tier, which had been recommended by the Joint Inspection Unit.**

14. If the statute of the United Nations Administrative Tribunal is amended in the manner indicated above, **the Advisory Committee recommends that the appointment continue to be done directly by the General Assembly in plenary.**

15. In connection with compensation of judges at the Administrative Tribunal of ILO and members of the United Nations Administrative Tribunal, the Advisory Committee was informed, upon enquiry, that the judges at the Administrative Tribunal of ILO receive the "usual" subsistence allowance (that is, not at the Under-Secretary-General level, as do members of the United Nations Administrative Tribunal) and a fee based on the number of cases dealt with annually. The judges get $1,500 for each case they draft and $375 (one-fourth) for each case at which they sit as a panel member and sign. In addition to travel and daily subsistence allowance expenses, members of the United Nations Administrative Tribunal now receive an honorarium of $1 per year.

16. Should the General Assembly accept the Advisory Committee's recommendation in paragraph 13 above on judicial qualifications, proposals could be made by the Secretary-General regarding compensation.